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Paper No.

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JUL 1 0 2008

OFFICE OF PETITIONS

In re Application of	:	
Sawyer et al.	:	
Application No. 09/939,061	:	LETTER REGARDING
Filed: August 24, 2001	:	PATENT TERM ADJUSTMENT
Attorney Docket No. 27839-2052	:	
(K-C 16,208)	:	
Title: THIN, HIGH CAPACITY	:	
ABSORBENT STRUCTURE AND METHOD	:	
FOR PRODUCING SAME	:	

This is a decision on the "LETTER REGARDING ERROR IN PATENT TERM ADJUSTMENT," filed April 10, 2008. Patentees request that the patent term adjustment indicated on the Notice of Allowance and Issue Fee Due be corrected from seven hundred and twenty-one (721) days to six hundred and twenty-one (621) days.

The request for reconsideration of the patent term adjustment is **DISMISSED**.

A Notice of Allowance and Issue Fee Due was mailed on January 18, 2008, with an indication that the patent term adjustment to date was 721 days.

Patentees' attempt at candor is appreciated. However, Patentees appear to have incorrectly evaluated the period of adjustment. Pursuant to 37 C.F.R. § 1.704(b), the failure to reply to an Office action within three months is a failure to engage in reasonable efforts to conclude prosecution. The Notice to File Missing Parts was mailed on September 28, 2001, and a response was not filed until April 11, 2002, which constitutes three

months and 104 days after the mailing of the Office communication.

Petitioner has argued that due to the fact that the notice set a two-month period for response, the period of delay should be based not on the date that is three months after the mailing of the communication, but rather the date on which a response was actually due (two months after the mailing of this communication). This argument is not persuasive, due to the fact that the Rule makes it clear that the shortened statutory period for reply of two months that is set in the notice has no effect on the three-month period set forth in the Rule.

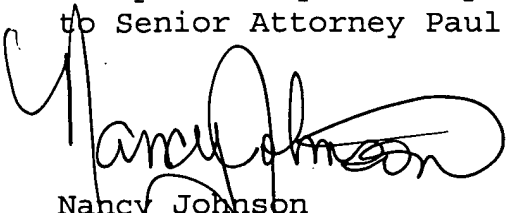
The other periods of delay are not at issue.

The proper period of adjustment for Office delay at the time of the mailing of the notice of allowance was 863 ($120 + 65 + 678$) days. The proper period of reduction at the time of mailing of the notice of allowance was 142 ($104 + 1 + 30 + 7$) days.

In view thereof, the correct patent term adjustment at the time of the mailing of the notice of allowance was 721 ($863 - 142$) days.

To the extent that this letter was submitted as an advisement to the Office of an error in Patentees' favor, the Office will not assess the \$200.00 fee under 37 C.F.R. § 1.18(e). The Office thanks patentees for their good faith and candor in bringing this to the attention of the Office.

Telephone inquiries specific to this matter should be directed to Senior Attorney Paul Shanowski at (571) 272-3225.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions